

REMARKS

The rejection of claims 1 - 17 under 35 USC 102 and 103 is respectfully traversed as being moot in view of the amendments.

The '102 rejection

The amendments to claim 1 clearly avoid the '102 rejection. The '146 reference does not show a lower surface of the vial in contact with the reference surface. The examiner has already agreed that the '146 reference does not show the adjusting means that is now required by claim 1.

The two references may not be properly combined

Applicants point out that the Willson '146 reference shows a sextant, a surveyor's theodolite, or other telescopic levels that do not make contact with a reference surface. See, for example, the text on page 3, line 57 - 61 and page 3, lines 96 - 97.

The embodiments of Figures 5 and 7 are unstable and would fall over if placed on a reference surface. The embodiments in Figures 1, 2 and 9

show a tube that is not indicated as having a precision machined lower surface that would accurately relate the reference surface on which the level might rest with the indicating vial.

Applicants readily agree that the Torbert reference shows a conventional frame for holding a vial; and that the Torbert frame may be placed on a reference surface. However, the '598 reference does not permit the adjustment of the line of sight in a horizontal plane with respect to a fixed vial. Torbert's vial inherently has an axis and the line of sight can only be perpendicular azimuthally to that axis. Tordert's long conventional frame for the vial can not be placed in a confined space.

Thus, the Willson reference shows an appparatus that can not be placed on a reference surface and has a line of sight that can only extend along the axis of the tube; and Torbert shows an apparatus that cannot be read at any azimuthal angle with respect to the axis of the vial and has a line of sight that can only be azimuthally perpendicular to the axis of the vial. The combination of the references would defeat the purpose of the Willson reference and would not work.

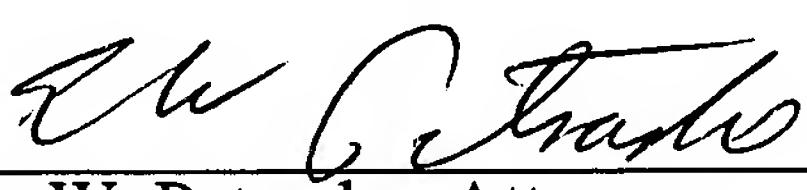
The combination of the references does not meet the claims.

In addition to the arguments in the preceding section, Applicants further argue that the combination of the references does not meet the claims as amended.

Applicants have noted that Torbert mentions on page 3, line 22 to page 3, line 2 on the right column that the vial may be removed from the frame and used in a confined space where the frame could not be placed. Applicants point out that: 1) there is discussion that the bottom of the vial is machined flat as is required for an accurate level; and 2) the clamps gripping the vial would interfere (i.e. come between the vial and the reference surface) for any vertical angle other than the horizontal. The requirement in all the claims that the line of sight may be adjusted in a vertical plane is therefore not met. Such an embodiment according to Torbert could also not rotate the adjusting means azimuthally with respect to a vertical axis while the vial is fixed, as is required by all claims.

For the foregoing reasons, allowance of the claims is respectfully solicited.

Respectfully submitted,


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